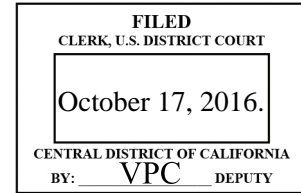


JS-6



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

ALFREDO M. LOPEZ, et al.,

Plaintiffs,

v.

AMERICAN EXPRESS BANK, FSB, et
al.,

Defendants.

Case No. CV09-7335 SJO (MANx)

The Honorable S. James Otero

**FINAL APPROVAL ORDER AND
JUDGMENT**

1 Upon review and consideration of the Settlement Agreement by and between
2 plaintiffs Alfredo M. Lopez and Lauren R. Greene (together, “Plaintiffs”) and
3 defendants American Express Bank, FSB and American Express Centurion Bank
4 (together, “American Express”) and the memoranda and arguments of counsel,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

6 1. Pursuant to Federal Rule of Civil Procedure 23(e), the settlement of this
7 Action, as embodied in the terms of the Settlement Agreement, is hereby finally
8 approved as a fair, reasonable and adequate settlement of this case in light of the
9 factual, legal, practical and procedural considerations raised. The definitions and
10 provisions of the Settlement Agreement are hereby incorporated as though fully set
11 forth herein. For purposes of this Order and Judgment, capitalized terms shall have
12 the meaning ascribed to them in the Settlement Agreement.

13 2. This Court has jurisdiction over the subject matter of the Settlement
14 Agreement with respect to and over all parties to the Settlement Agreement,
15 including all members of the Settlement Class.

16 3. The Court hereby approves the settlement, including the plan of
17 distribution of the settlement relief, and finds that the settlement is, in all respects,
18 fair, reasonable and adequate to the Settlement Class Members, within the authority
19 of the parties and the result of extensive arm’s-length negotiations.

20 4. Pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(3), 23(c) and
21 23(e), the Court certifies, for settlement purposes only, the following Settlement
22 Class:

23 All persons or entities in the United States who: (a) had a consumer or
24 small-business American Express credit card or charge card account
25 with American Express Centurion Bank or American Express Bank,
26 FSB; and (b) had a fixed annual percentage rate for purchases on the
27 account that was increased or changed to a variable rate at any time

1 between October 1, 2005 and December 31, 2010; or (c) had a fixed
2 annual percentage rate for purchases on the account and were provided
3 notice of an increase in the fixed rate or a change from the fixed rate to a
4 variable rate at any time between October 1, 2005 and December 31,
5 2010.

6 5. This Order and Judgment does not constitute an expression by the Court
7 of any opinion, position or determination as to the merit or lack of merit of any of the
8 claims or defenses of Plaintiffs, the Settlement Class Members or American Express.
9 Neither this Order and Judgment nor the Settlement Agreement is an admission or
10 indication by American Express of the validity of any claims in this Action or of any
11 liability or wrongdoing or of any violation of law. This Order and Judgment and the
12 Settlement Agreement do not constitute a concession and shall not be used as an
13 admission or indication of any wrongdoing, fault or omission by American Express
14 or any other person in connection with any transaction, event or occurrence, and
15 neither this Order and Judgment nor the Settlement Agreement nor any related
16 documents in this proceeding nor any reports or accounts thereof shall be offered or
17 received in evidence in any civil, criminal or administrative action or proceeding,
18 other than such proceedings as may be necessary to consummate or enforce this
19 Order and Judgment, the Settlement Agreement and all releases given thereunder, or
20 to establish the affirmative defenses of res judicata or collateral estoppel.

21 6. The Court hereby dismisses this Action with prejudice as to Plaintiffs
22 and all Settlement Class Members except those who have timely and properly
23 excluded themselves from the Settlement Class. Exhibit A, attached hereto, sets
24 forth the names of those individuals who have timely and properly excluded
25 themselves from the Settlement Class.

1 7. Each Class Member shall be bound by the Settlement Agreement,
2 including the releases in the Settlement Agreement, which is hereby incorporated by
3 reference and becomes part of the final judgment in this Action.

4 8. (a) Upon the date that this Order and Judgment becomes Final, each
5 Settlement Class Member (except those who have obtained proper and timely
6 exclusion from the Settlement Class), their respective heirs, executors,
7 administrators, representatives, agents, attorneys, partners, successors, predecessors
8 in interest, assigns and any authorized users of their accounts will be deemed to have
9 fully released and forever discharged Defendants and each and all of their present,
10 former and future direct and indirect parent companies, affiliates, subsidiaries,
11 agents, successors, predecessors in interest and/or any financial institutions,
12 corporations, trusts, or other entities that may hold or have held any interest in any
13 account or any receivables relating to any account, or any receivables or group of
14 receivables, or any interest in the operation or ownership of Defendants, and all of
15 the aforementioned's respective officers, directors, employees, attorneys,
16 shareholders, agents, vendors (including processing facilities) and assigns, from any
17 and all rights, duties, obligations, claims, actions, causes of action or liabilities,
18 whether arising under local, state or federal law (including without limitation under
19 any state consumer-protection and/or unfair and deceptive practices acts, the Truth in
20 Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. pt. 1026),
21 whether by Constitution, statute, contract, common law or equity, whether known or
22 unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen,
23 actual or contingent, liquidated or unliquidated, as of the date of Final Judgment in
24 the Action: (1) that arise out of or relate to the allegations, causes of actions and facts
25 that were asserted in the Action; or (2) that arise out of or relate in any way to the
26 administration of the settlement. The foregoing release does not waive rights of any
27 Settlement Class Members to dispute amounts owed on individual accounts or to

1 seek legal recourse for any other matters related to their accounts other than those
2 that arise out of or relate to the allegations, causes of actions and facts that were
3 asserted in the Action or that arise out of or relate in any way to the administration of
4 the settlement.

5 (b) Upon the date that this Order and Judgment becomes Final,
6 Plaintiffs and their respective heirs, executors, administrators, representatives,
7 agents, attorneys, partners, successors, predecessors in interest, assigns and any
8 authorized users of their account will fully release and forever discharge Defendants
9 and each and all of their present, former and future direct and indirect parent
10 companies, affiliates, subsidiaries, agents, successors, predecessors in interest and/or
11 any financial institutions, corporations, trusts, or other entities that may hold or have
12 held any interest in any account or any receivables relating to any account, or any
13 receivables or group of receivables, or any interest in the operation or ownership of
14 Defendants, and all of the aforementioned's respective officers, directors, employees,
15 attorneys, shareholders, agents, vendors (including processing facilities) and assigns,
16 from any and all rights, duties, obligations, claims, actions, causes of action or
17 liabilities, whether arising under local, state or federal law (including without
18 limitation under any state consumer-protection and/or unfair and deceptive practices
19 acts, the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R.
20 pt. 1026), whether by Constitution, statute, contract, common law or equity, whether
21 known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or
22 unforeseen, actual or contingent, liquidated or unliquidated, as of the date of Final
23 Judgment in the Action, without limitation.

24 (c) Without limiting the foregoing, the Released Claims specifically
25 extend to claims that Plaintiffs and the Settlement Class Members do not know or
26 suspect to exist in their favor at the time that the settlement, and the releases
27 contained therein, becomes effective. This paragraph constitutes a waiver of all
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1 provisions, rights, and benefits of all state or common-law rules limiting the release
2 of known or unknown claims, including without limitation as to any other applicable
3 law, section 1542 of the California Civil Code, which provides:

4 A general release does not extend to claims which the creditor does not know
5 or suspect to exist in his or her favor at the time of executing the release,
6 which if known by him or her must have materially affected his or her
7 settlement with the debtor.

8 Plaintiffs understand and acknowledge, and each member of the Settlement Class
9 shall be deemed to understand and acknowledge, the significance of the waiver of
10 California Civil Code section 1542 and/or of any other applicable law relating to
11 limitations on releases. In connection with such waiver and relinquishment,
12 Plaintiffs acknowledge, and all members of the Settlement Class shall be deemed to
13 acknowledge, that they are aware that they may hereafter discover facts in addition
14 to, or different from, those facts which they now know or believe to be true with
15 respect to the subject matter of the settlement, but that it is their intention to release
16 fully, finally and forever all Released Claims, and in furtherance of such intention,
17 the release of the Released Claims will be and remain in effect notwithstanding the
18 discovery or existence of any such additional or different facts.

19 9. The Court finds that the program of Class Notice set forth in the
20 Settlement Agreement and preliminarily approved by the Court was the best notice
21 practicable under the circumstances and was directed to Settlement Class Members
22 in accordance with the Court's Order Preliminarily Approving Settlement. The Class
23 Notice provided due and adequate notice of these proceedings and of the matters set
24 forth therein, including the Settlement Agreement, to all Settlement Class Members
25 entitled to such notice and satisfied the requirements of Federal Rule of Civil
26 Procedure 23 and the requirements of constitutional due process.

1 10. The Court appoints Alfredo M. Lopez and Lauren R. Greene as class
2 representatives of the Settlement Class and finds that they each meet the
3 requirements of Federal Rule of Civil Procedure 23.

4 11. The Court appoints Marc R. Stanley, Martin Woodward, and Matthew J.
5 Zevin, Stanley Law Group, Michael D. Braun, Braun Law Group PC, Andrew S.
6 Kierstead, Law Office of Andrew Kierstead, Peter N. Wasylyk, Law Offices of Peter
7 N. Wasylyk, and John Koenig, Law Office of John Koenig, as counsel for the
8 Settlement Class. The Court appoints Marc R. Stanley and Matthew J. Zevin, Stanley
9 Law Group, and Michael D. Braun, Braun Law Group PC, as Lead Class Counsel.
10 The Court finds that counsel are competent and capable of exercising all
11 responsibilities as Class Counsel and Lead Class Counsel, and that these attorneys
12 meet the requirements of Federal Rule of Civil Procedure 23(g).

13 12. The Court hereby approves Consumer Federation of America (America
14 Saves Campaign) to receive the *Cy Pres* Distribution in accordance with the terms
15 set forth in the Settlement Agreement.

16 13. In aid of this Court's jurisdiction to implement and enforce the
17 settlement, Plaintiffs and all Settlement Class Members and all persons purporting to
18 act on behalf of Settlement Class Members are enjoined, directly, on a representative
19 basis or in any other capacity, from asserting, commencing, prosecuting or
20 continuing any of the Released Claims against American Express or any of the other
21 Released Parties in any action, arbitration or proceeding in any court, arbitral forum
22 or tribunal.

23 14. Without affecting the finality of this Order and Judgment in any way,
24 the Court retains continuing jurisdiction over: (a) implementation of the Settlement
25 Agreement and distribution of the settlement payments contemplated by the
26 Settlement Agreement, until all acts agreed to be performed pursuant to the
27 Settlement Agreement have been performed; and (b) all parties to this Action and

1 members of the Settlement Class for the purpose of enforcing and administering the
2 Settlement Agreement.

3 15. The Court approves Class Counsel's application for \$1,531,136.08 in
4 attorneys' fees and costs.

5 16. The Court approves incentive awards for Alfredo M. Lopez in the
6 amount of \$5,000 and Lauren R. Greene in the amount of \$5,000.

7 17. The Parties shall carry out their respective obligations under the
8 Settlement Agreement.

9 **IT IS SO ORDERED.**

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11 Dated: October 17, 2016.

A handwritten signature in black ink that reads "S. James Otero". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

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13 The Honorable S. James Otero
14 United States District Judge
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